DE MARIA BUILDING COMPANY, INC.

CONTRACT NO. V101CC0177 **VABCA-6889-6891**

VA MEDICAL CENTER
ANN ARBOR, MICHIGAN

Michael J. Farley, Esq., Associate General Counsel, Jervis B. Webb Company, Farmington Hills, Michigan, for the Appellant.

Millicent Gompertz, Esq., Trial Attorney, Hines, Illinois; ***Charlma J. Quarles, Esq.,*** Deputy Assistant General Counsel; and ***Phillipa L. Anderson, Esq.,*** Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE SHERIDAN ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

DeMaria Building Company, Inc. (DeMaria or Contractor) filed timely appeals from a contracting officer's final decision which denied claims totaling $99,322, associated with Department of Veterans Affairs (VA or Government) Contract No. V101CC0177 to provide the Clinical Addition and Renovation, Phase IV, at the VA Medical Center Ann Arbor, Michigan. The disputes center on whether DeMaria was required to provide low voltage control wiring between the paralleling switchgear and the automatic transfer switches. The parties agree that the paralleling switchgear and the automatic transfer switches are contractually required, and it is undisputed that the control wiring is needed for the auxiliary power system to function within the 10 seconds required by the National Electrical Code. Without the control wiring the automatic transfer switches cannot function properly and cannot automatically transfer power to the emergency generator. DeMaria takes the position that the Contract did not

require it to provide the control wiring while the VA argues the control wiring, an integral part of the system, was contractually required.

Following the pleading process, DeMaria submitted APPELLANT'S MOTION FOR SUMMARY JUDGMENT (Appellant's Motion). The VA submitted GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT (Government's Motion) (with the attached Declaration of Jeffrey L. Steplowski (Steplowski Decl.)). The VA submitted a RESPONSE TO APPELLANT'S MOTION FOR SUMMARY JUDGMENT (Government's Response), and the Appellant submitted a RESPONSE TO GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT (Appellant's Response). The VA also submitted GOVERNMENT'S REPLY TO APPELLANT'S RESPONSE TO GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT (Government's Reply) (with the attached Declaration of Ron Siehda (Siehda Decl.)). The record for purposes of deciding these Motions consists of the documents above, the Appellant's Complaint (Compl.), the Government's Answer (Answer), the Summary of Appellant's Position, the Government's Position Paper, the Appeal File (R4), tabs 1 through 31 (tab 22 is unassigned), and the Appeal File Supplement (R4 Supp.), tabs 500 through 519.

FINDINGS OF FACT FOR PURPOSE OF DECIDING THE MOTIONS FOR SUMMARY JUDGMENT

The following findings of fact are made for the purposes of this decision only.

On or about February 7, 2000, VA awarded Contract No. V101CC0177 (Contract) to DeMaria. The Contract, in the amount of $32,375,390 was for the Clinical Addition and Renovation, Phase IV, (Building 1 West Renovation) at the VA Medical Center (VAMC) Ann Arbor, Michigan. (R4, tab 1) The Description of the Work included:

> Interior demolition and alterations to an existing nine story (plus basement) structure; including asbestos and lead abatement, selective demolition, new interior construction finishes, plumbing, electrical, sprinkler system and renovation, with limited work elsewhere. The fourth floor is dedicated to new HVAC and electrical equipment, serving floors above and below via new ducts in fire rated shafts, and new power risers.

(R4, tab 23, Amendment No. 1, p. 2)

The General Conditions portion of the Contract set forth the following caveat:

> In some instances it may have been impracticable to detail all items in specifications or on drawings because of variances in manufacturers' methods of achieving specified results. In such instances the contractor will be required to furnish all labor, materials, drawings, services and connections necessary to *produce systems or equipment which are completely installed, functional, and ready for operation* by facility personnel in accordance with their use.

(R4, tab 23, Section 01001.1.1(d) (emphasis added))

The General Requirements portion of the Contract under General Construction stated:

> Work includes general construction, alterations, demolition, mechanical, and electrical work, equipment, utility systems, signal systems, interior construction and certain other items. The systems particular to one manufacturer are . . . Automatic Transfer Switch (By ASCO).

(R4, tab 23, Section 01010.1.2.A)

The Contract also called for DeMaria to provide testing on mechanical and electrical equipment and systems:

> 1.17 TESTS
>
> . . .
>
> B. Conduct final tests required in various sections of specifications in presence of an authorized representative of the Contracting Officer. Contractor shall furnish all labor, materials, equipment, instruments, and forms, to conduct and record such tests.
>
> C. Mechanical and electrical systems shall be balanced, controlled and coordinated. A system is defined as the entire complex which must be coordinated to work together during normal operation to produce results for which the system is designed. For example, air conditioning supply air is only one part of entire system which provides comfort conditions for a building. Other related components are return air, exhaust air, steam, chilled water, refrigerant, hot water controls and electricity, etc. Another example of a complex which involves several components of different disciplines is a boiler installation. Efficient and acceptable boiler operation depends upon the coordination and proper operation of fuel,

combustion air, controls, steam, feedwater, condensate and other related components.

D. All related components as defined above shall be functioning when any system component is tested. Tests shall be completed within a reasonably short period of time during which operating and environmental conditions remain reasonably constant.

E. Individual test result[s] of any component, where required, will only be accepted when submitted with the test results of related components and of the entire system

(R4, tab 23, Section 01010.1.17)

Section 1.2 of Section 16050 specifies the minimum code requirements for installation of the electrical work. Section 1.2.A provides that "[r]eferences to the National Electrical Code (NEC), Underwriters Laboratories, Inc (UL), and National Fire Protection Association (NFPA) are a minimum installation requirement standard." (R4, tab 24(a))

The Notice to Proceed was received by DeMaria on March 1, 2000, and provided for completion of the work within 730 calendar days after receipt. (R4, tab 2) DeMaria, the prime contractor, subcontracted with Webb Electric Company (Webb) to provide a portion of the electrical requirements of the Contract. (Compl., ¶ 3) As part of its work on the Contract, Webb was required to install sixteen (16) ASCO automatic transfer switches (ATS) whose function was to switch electric power back and forth as necessary between electric power supplied by local utilities and the VAMC's own generators. (Compl., ¶ 5) Proper functioning of this equipment and system ensured that, in the event of

local utility power failure, the VAMC would be able to provide its own power from generators located on the facility.

Relevant provisions for automatic switching of the power were set forth in the ATS section of the specification, Section 16251, that provided *inter alia*,

> PART 1 - GENERAL
>
> 1.1 DESCRIPTION
>
> This section includes the furnishing, installation and connection of automatic transfer switches.
>
> . . .
>
> PART 2 – PRODUCTS
>
> 2.1 AUTOMATIC TRANSFER SWITCHES, GENERAL
>
> A. Automatic transfer switches shall be in accordance with UL, NEMA, NEC, ANSI, as specified and as shown on the drawings.
>
> . . .
>
> D. The unit shall be a complete assembly, factory wired so that only external circuit connections are required in the field.
>
> E. The digital controls shall operate directly with the ASCO "communication network." See communication network section of this specification section.
>
> . . .
>
> G. The automatic transfer switch shall be ASCO (Automatic Switch Company), 952 Series.

2.5 ACCESSORIES

Transfer switches shall include the following accessories:

. . .

F. Communications Networks:

1. Each automatic transfer switch shall contain controls to enable communication with the new and ***the*** existing ***ASCO Communication System*** through a twin twisted pair of No. 22 gauge wire in a shielded, jacketed cable. The communication shall be annunciated on the paralleling switchboard located in the generator building.

. . .

G. Auxiliary Contacts:

. . .

2. Provide additional contacts as necessary to accomplish the functions shown on the drawings, specified, and designated in other sections of these specifications including interface with the campus energy management system.

. . .

2.6 TRANSFER SWITCH OPERATION

A. Engine Start: A voltage decrease, at any transfer switch, in one or more phases of the normal power source to less than 70 percent of normal shall start the engine-generator unit

after a time-delay of two to three seconds (field adjustable).

B. Transfer to Emergency (Emergency System Loads): Transfer switches for emergency system loads shall transfer their loads from normal to emergency source when frequency and voltage of the engine-generator unit have attained 90 percent of rated value. Only those switches with deficient normal source voltage shall transfer.

C. Transfer to Emergency (Emergency System Loads): Transfer switches for emergency system loads shall transfer their loads to the generator on a time-delayed staggered basis, after the emergency system switches have transferred. Total delayed transfer time of an equipment system switch shall not exceed two minutes. Time delay relays shall be field adjustable zero to two minutes.

D. Retransfer to Normal (All Loads): Transfer switch shall retransfer to normal source upon restoration of normal supply in all phases to 90 percent or more of normal voltage, and after a time-delay. Time-delays shall be field adjustable form five to twenty-five minutes (preset for twenty-five minutes). Should the emergency source fail during the timing, the transfer switch shall immediately transfer to normal when the source is available.

. . .

PART 3 – EXECUTION

3.1 INSTALLATION

A. Installation drawings shall be in accordance with the NEC and as shown on the drawings.

. . .

3.4 TESTING

A. When the complete system has been installed, and prior to the final inspection, test all components of the system in the presence of the Resident Engineer for proper operation of the individual components and the complete system to eliminate electrical and mechanical defects.

. . .

3.5 INSTRUCTIONS AND FINAL INSPECTIONS

A. At the final inspection in the presence of a VA representative, demonstrate that the complete auxiliary electrical power system operates properly in every respect.

(R4, tab 23, Section 16251 (emphasis in original))

The Contract drawings made no mention of, and did not depict, the control wiring. (Compl., ¶ 9; Answer ¶ 9) However, the Contract did require DeMaria to provide elementary and interconnection wiring diagrams as part of the shop drawing submittals for the ATS. (R4, tab 23, Section 16251.1.3.A.1.c) In making its submittal on the ASCO ATS, DeMaria, through Webb, provided certain drawings which it received from ASCO, the ATS supplier. On August 15, 2000, the submittal was initially disapproved with, *inter alia,* a note instructing DeMaria to "[p]rovide automatic generator start per 16251 part 2.6." (R4, tab 20)

On June 20, 2001, Webb submitted a Request for Information (RFI) to the VA through DeMaria asking for information pertaining to the installation of control wiring between the ATS's and the paralleling switchgear. (R4, tab 3) George Karaboyias, the Senior Resident Engineer (SRE) assigned to administer this Contract for the VA responded on June 21 that the control wiring between the ATS's and the paralleling switch gear was needed for proper operation of the ATS's and instructed to DeMaria to install the wiring per the Contract. (R4, tab 3)

Correspondence between the parties ensued with DeMaria arguing for Webb that "there is not any control wiring shown on the contract drawings." (R4, tab 4) SRE Karaboyias wrote to DeMaria on July 6, 2001, stating "[c]ontrol wiring between the ATS and paralleling switchgear is required per Contract Specification Section 16251, Paragraph 2.5.F.1." (R4, tab 5)

DeMaria directed Webb to proceed with the work which Webb did under protest indicating they would seek extra compensation for the work. Webb estimated the control wiring work would cost between $90,000 and $125,000. (R4, tab 6) On July 31, 2001, Ned Chika, Web's Project Manager wrote DeMaria explaining Webb's position that the control wiring was not part of the Contract. He asserted that failure to mention the control wiring and provide for its installation was a mistake on the part of the designer for which Webb should not be held responsible. (R4, tab 7) DeMaria passed the matter on to the VA who, in turn, referred the matter to its consultant architect/engineer (A/E) Harley Ellis for review and comment. (R4, tab 8) On September 4, 2001, DeMaria wrote the VA informing it that they estimated it would cost a total of $99,322 extra to provide and install the control wiring between the 16 ATS's and paralleling switch gear. (R4, tab 9) In a subsequent ATS submittal DeMaria provided Drawing JS465937, which was supplied by ASCO, the manufacturer of the ATS,

showing the automatic start function. The drawing indicated "customer connection points" and a wiring diagram for the switching of power through the ATS from normal to emergency power. (R4, tab 20, Drawing JS465937)

Ronald M. Siehda, PE, delivered the Harley Ellis comments to the VA on the control wiring issue on September 13, 2001, noting:

> First and foremost, Webb Electric is obligated by the plans and specifications to provide a complete system.
>
> Specification Section 16251.2.6.A states the following:
>
> > "2.6 TRANSFER SWITCH OPERATION"
> > A. Engine Start: A voltage decrease, at any transfer switch, in one or more phases of the normal power source to less than 70 percent of normal **shall start the engine generator unit** after a time delay of two to three seconds (field adjustable)."
>
> Webb Electric is required to comply with the performance specification explaining the operation of the automatic transfer switch as it relates to starting the engine generator during voltage dips or outages. The exact Means and Methods must be coordinated with ASCO.
>
> The specifications are a VA standard, which outline the expected performance of the complete system, including the engine generator start function. Our office as well as your office has no knowledge of this problem at any other VA facility.
>
> As you know, ASCO is the manufacturer of the automatic transfer switch. ASCO was the only approved manufacturer. It should <u>not</u> have been difficult to coordinate specific requirements with only one manufacture during the bidding process.

. . .

> Webb is required to provide a complete and operable installation and, as part of the contract, Webb is required to provide the engine start controls.

(R4, tab 10 (emphasis in original)

On September 25, 2001, SRE Karaboyias wrote DeMaria stating the VA found the proposal requesting extra compensation for the control wiring to be without merit and concluding "[t]he Contractor is required by the contract documents to provide a complete and operable system. A vital component of the system is the installation of the control wiring between the ATS and the paralleling switchgear." (R4, tab 12)

DeMaria submitted its claim for the cost of the control wiring on December 10, 2001. In its claim DeMaria sought $99,322. Of the amounts claimed DeMaria sought $97,361 for Webb, $1,780 for itself and $181 in Critical Path Method Scheduling costs. (R4, tab 12)

A final decision was issued on March 5, 2002 by Chris K. Kyrgos, the VA Contracting Officer (CO) assigned to the Contract. In that final decision CO Kyrgos denied DeMaria's claim for $99,322 asserting that the "specifications outline the performance of the complete system including the engine generator start function." (R4, tab 16) DeMaria timely appealed the final decision and the disputes were duly docketed on May 22, 2002. The $97,361 sought for Webb was docketed as VABCA No. 6889, the $1,780 sought for DeMaria was docketed as VABCA No. 6890 and the $181 for Critical Path Method (CPM) scheduling costs was docketed as VABCA No. 6891.

As an attachment to its Motion the Government offers the Declaration of Jeffrey L. Steplowski (Steplowski Decl.). Mr. Steplowski worked for 28 years at the VA in various positions including electrical engineer and project manager. In

his current position as a Senior Consulting Electrical Engineer his duties include providing consulting services to VA facilitates throughout the United States, giving guidance on implementing policy on electrical engineering issues and on code requirements for electrical systems, updating electrical specifications, and creating design criteria for new design projects. Mr. Steplowski has also been a member on several code committees including, National Electrical Code (NFPA 70) Panel 17, the National Fire Protection Association 99 for Health Care Facilities, National Fire Protection Association 110, Emergency and Standby Power Systems, and National Fire Protection Association 111, Stored Electrical Energy Emergency and Standby Power Systems. (Steplowski Decl., ¶¶ 2-4) Prior to offering his opinions on this matter, Mr. Steplowski reviewed various provisions of the specifications, the National Electrical Code (NEC), and the National Fire Protection Association (NFPA). (Steplowski Decl., ¶¶ 6-14, 17-22); R4F, tabs 23, 24; R4F, tab 28 (NEC, Articles 517-30 through 517-35); tab 29 (NFPA 110); tab 30 (NFPA 99, Chapters 3 and 12). These standards and code provisions were set forth as additional Contract requirements. R4, tab 23, Section 16251. Citing to various NEC, NFPA and Specification provisions, Mr. Steplowski's Declaration proffers the following conclusions:

> 12. Pursuant to the NEC and the NFPA, the Ann Arbor VAMC is required to have an electrical system that supplies alternate power with automatic restoration of electrical power within 10 seconds of power interruption.
>
> 13. In addition, based on the emergency system requirements, the hospital is required to have a system that requires the automatic restoration of electrical power within 10 seconds of power.

. . .

15. Without the installation of the control wiring, the ATS cannot function and transfer the power to the generator in the hospital.

16. VA does not depict the control wiring in its drawings. This is because the control wiring requirement depends on the type of automatic transfer switches purchased by the Contractor on behalf of VA. For this reason, VA's specifications describe how the ATS is to function upon testing and they imposed certification requirements on the Contractor showing that the ATS is properly installed. Typically the Contractor is expected to obtain the installation information from the ATS supplier and will use that information to determine how to install the control wiring for each of the ATS devices.

. . .

22. The control wiring relates to the installation and connection of the ATS devices to the generator. The control wiring, the ATS, and the generator are essential parts of the Emergency Power Supply System (EPSS).

23. The control wiring is similar to the veins in the body. Whereas the veins send blood supply to the various parts of the body for proper functioning of the various organs, the control wiring sends the signals to the ATS, the paralleling switchgear, and the generator. These signals communicate between the ATS, the switchgear and the generator. In the event of a power outage the ATS senses the outage, starts the engine generator, and transfers to emergency power. Upon restoration of normal power, the ATS retransfers power from the generator back to the normal source of power and automatically shuts down the generator.

(Steplowski Decl., ¶¶ 12-13, 15-16, 22-23 (citations omitted)) In NFPA 110, Chapter 2.1, Standard for Emergency and Standby Power Systems, an

Emergency Power Supply System is defined as a complete functioning system of an emergency power supply coupled to a system that can consist of conductors, disconnecting means, overcurrent protective devices, transfer switches, and all control supervisory and support devices up to and including the load terminals of the transfer equipment needed for a system to operate as a safe and reliable source of electrical power. (R4, tab 29)

As an attachment to the Government's Reply, the VA offers the Declaration of Ron Siehda (Siehda Decl.). Mr. Siehda is employed by VA's consultant A/E, Harley Ellis, and was involved in drafting the specifications and drawings of the Contract. Mr. Siehda opines that without the installation of the control wiring the ATS cannot function properly and cannot automatically transfer power to the emergency generator. (Siehda Decl., ¶ 9) Mr. Siehda bases his opinion on VA Drawing E7.14 showing the installation of the new ATS devices to the new switchboard and ASCO drawing JS 465937 which DeMaria provided as part of its submittal package on the ATS. Mr. Siehda says that the ASCO drawing acknowledges that ASCO's customer, DeMaria, was required to provide transfer switch connections to communicate with the ATS and facilitate the switching of power through the ATS from normal to emergency power. He states that these connections are described by DeMaria as control wiring. (Siehda Decl., ¶¶ 3-8)

DISCUSSION

The appeals before us involve a matter of contract interpretation and rest on each party's respective interpretation of the Contract specifications. The parties have cross-moved for summary judgment with the Appellant asserting that it was not contractually required to provide control wiring between the ATS and the paralleling switchgear because the specifications, drawings and other Contract documents do not contain any requirement for ATS control wiring. The

Government, conceding that while the Contract drawings did not contain riser drawings for the control wiring, installation of control wiring was necessary for the fully functioning emergency power supply system required by the Contract.

Contract interpretation is a question of law that may be resolved by summary judgment. ***P.J. Maffei Building Wrecking Corp. v. United States***, 732 F.2d 913, 916 (Fed. Cir. 1984). However, if there is a genuine dispute of material fact, summary judgment is inappropriate. ***Beta Systems v. United States***, 838 F.2d 1179, 1183 (Fed. Cir. 1988). For summary judgment to be granted there can be no genuine issue of material fact and the moving party must be entitled to judgment as a matter of law.

The fact that cross-motions have been filed does not mean that this Board must grant judgment to one of the parties. Each party's motion must be evaluated individually and on its own merits under the standards set forth below. That the parties' claims are inherently contradictory does not preclude our granting either party's motion or relieve us of the responsibility to draw inferences as to existence of a dispute as to a material fact in favor of the nonmovant on each motion. ***Mingus Constructors, Inc. v. United States***, 812 F.2d 1387, 1391 (Fed. Cir. 1987); ***Agency Construction Corp.,*** VABCA Nos. 4559, 4660, 96-2 BCA ¶ 28611.

The Appellant's Motion summarily asks us to grant judgment on its behalf and rests its case on "its Complaint, the Summary of Appellant's Position, and all of the Rule 4 submissions, including the relevant cases submitted as Appellant's Exhibit 517." (Appellant's Motion, p. 1) The Appellant essentially argues "[t]he specifications, drawings and other contract documents, taken individually or as a whole, do not contain any requirement, anywhere, for ATS control wiring." (Appellant's Response, p. 1) According to DeMaria, Specification Section 16251.3.1 requires that:

> Installation (of the ATS) shall be in accordance with the NEC (National Electrical Code), and as shown on the drawings. The control wiring is not shown on the drawings for the Project, which were incorporated into the Contract. The control wiring is external to the ATS and is not an integral part of the ATS.

(Compl., ¶¶ 8-10) The Appellant argues that the control wiring "requires a riser diagram or schematic showing how the ATS and paralleling switchgear are to be connected so that the ATS can function as designed." (Compl., ¶ 12) The Appellant's submission, however, fails to articulate any undisputed facts, make compelling arguments, or apply the law referenced by the Motion. Appellant provided no probative evidence that a reasonable contractor would conclude that control wiring was not an integral part of a complete auxiliary electrical power system that operates properly in every respect and, therefore, not required by the Contract. Other than making broad and conclusory statements, the Appellant failed to provide probative evidence to support its arguments that, because the control wiring was not shown on the drawings and because it was not an integral part of the ATS, it was not required. Mere allegations made by a contractor, unsupported by evidence of probative value, are insufficient to enable it to prevail. ***Etex Company***, VABCA No. 3415, 93-3 BCA ¶ 26,116; ***RobGlo, Inc.,*** VABCA No. 2879, 91-01 BCA ¶ 23,357; ***Kelly Control Systems Inc.***, VABCA No. 2337, 87-3 BCA ¶ 20,064. We find that Appellant's reading of the Contract is overly narrow and discounts the various other specification provisions requiring the Contractor to provide a complete auxiliary electrical power system that operates properly in every respect. The Appellant's Motion is denied.

The Government's Motion argues that the ATS control wiring is an integral part of the auxiliary electrical power system auxiliary required by the Contract without which:

> [T]he transfer switch cannot operate to automatically transfer one or more load conductor connections from one power source to the other, as required by the drawings, specifications, the National Electric Code (NEC), and the National Fire Protection Association (NFPA).
>
> The lack of control wiring is so essential to the functioning of each ATS that, without it the electrical power cannot be automatically restored after power disruption. Automatic restoration of power is an essential part of the Emergency Power Supply System for any health care facility.

(Government's Motion, pp. 2-3)

The Government's Motion sets forth undisputed facts that the Appellant failed to address or rebut in any meaningful way. As the non-moving party, DeMaria must show, by pointing to some part of the record or additional evidence, that pertinent material facts exist that differ significantly from those presented by the Government. The Appellant must also show that based on those differing facts a reasonable fact-finder, drawing inferences in favor of the non-movant, could decide in favor of the non-movant. ***C. Sanchez and Son, Inc.,*** 6 F.3d 1539 (Fed. Cir. 1993); ***Invacare Corporation***, VABCA Nos. 6574, 6599-6600, 02-2 BCA ¶ 32,040; ***Fire Security Systems, Inc.***, VABCA No. 3086, 90-03 BCA ¶ 23,235; ***Hengel Associates***, VABCA No. 3921, 94-3 BCA ¶ 27,080. The Appellant has failed to do this and, as such, we find the material facts as set forth in Government's Motion to be undisputed.

Having found no material facts in dispute we advance to interpret whether the Contract required DeMaria to install control wiring between the ATS and the paralleling switchgear. We interpret a contract by examining the plain language of the contract, reading all parts of the contract as a whole, and giving reasonable

meaning to all of its parts. We make our interpretation such that no part of the contract is made inconsistent, superfluous, or redundant. ***United International Investigative Service v. United States***, 109 F.3d 734 (Fed. Cir 1997); ***Edward R. Marden Corp. v. United States***, 803 F.2d 701 (Fed. Cir. 1986); ***Hol-Gar Manufacturing Corp. v. United States***, 351 F.2d 972, 979 (Ct. Cl. 1965); ***Agency Construction Corp.***, VABCA Nos. 4559-60, 96-2 BCA ¶ 28,611; ***L & L Insulation, Inc.***, VABCA No. 3734, 95-2 BCA ¶ 27,757; ***Saturn Construction Co., Inc***. VABCA No. 2600, 88-2 BCA ¶ 20,632.

We have reviewed the Contract in its entirety reading it as a whole, giving reasonable meaning to all of its parts including the specifications, drawings, and referenced code provisions. In particular, we reviewed Specification Sections 01001, 16050 and 16251, as well as the various referenced NEC and NFPA provisions. The unrebutted declaration testimony of Messrs. Steplowski and Siehda, together with Specification Sections 01001, 16251, and applicable NEC and NFPA provisions establish that, to operate properly, the auxiliary electrical power system had to be capable of switching automatically from normal power to emergency power within ten seconds of power interruption.

The ATS functions to switch electrical power back and forth as necessary between the power supplied by the local utility and the VAMC's emergency generators. This switching is to occur when the normal electrical power from the local utility drops or is lost. Once the local utility power is restored the ATS switches from the emergency power provided by the emergency generators back to the local utility power source. The control wiring sends signals to the ATS, the paralleling switchgear and the generator, and is necessary for the ATS to automatically transfer load conductor connections from one power source to the other, *i.e.*, from local utility power to emergency power. Without the control wiring the ATS does not have the capacity to function automatically to restore

power and must be switched manually. (Government's Motion, p. 3) Thus, the control wiring is an essential part of the VAMC's complete auxiliary electrical power system also referred to by Mr. Steplowski as the emergency power supply system.

The Contract required DeMaria to install a system capable of switching from the local utility power and the VAMC Ann Arbor emergency generators within ten seconds of power interruption, and then switching back upon local utility power restoration. In order to provide a "complete auxiliary electrical power system that operates in every respect," including the automatically switching capability, control wiring was required. *See, e.g.,* ***H.W. Stanfield Company***, ASBCA No. 19771, 75-1 BCA ¶ 11,121; ***J.W. Bateson Company, Inc.***, ENGBCA Nos. 969, *et al.*, 1956 WL 292. When we interpret a contract we do not leave our common sense at the door. DeMaria essentially asked us to do that when it argued that it was not required to provide the control wiring. Having found the Appellant's interpretation to be unreasonable, the Government's Motion is granted.

DECISION

Based on the foregoing, GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT with regard to VABCA Nos. 6889-6891 is GRANTED and the appeals of DeMaria Building Company, Inc., under Contract No. V101CC0177, are DISMISSED. APPELLANT'S MOTION FOR SUMMARY JUDGMENT on VABCA-6889-6891 is DENIED.

DATE: **November 19, 2003**

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PATRICIA J. SHERIDAN
Administrative Judge
Panel Chair

We Concur:

_____
MORRIS PULLARA, JR.
Vice Chairman

_____
RICHARD W. KREMPASKY
Administrative Judge